

Complaint

Mrs A has complained about the quality of a car that Blue Motor Finance Ltd ("BMF") supplied to her through a hire-purchase agreement.

Background

In June 2024, BMF provided Mrs A with finance for a used car. The car was around nine years old and it is my understanding that it had completed around 80,400 miles at the time of purchase. The cash price of the vehicle was £7,248.00. Mrs A paid a deposit of £1,000.00 and applied for finance to cover the remainder she needed. BMF accepted Mrs A's application and entered into a 36-month hire-purchase agreement with her.

The loan had an APR of 15.9%, interest, fees and total charges of £1,532.60 (made up of interest of £1,531.60 and a £1 option to purchase fee) and the balance to be repaid of £7,780.60 (which does not include Mrs A's deposit) was due to be repaid in 35 monthly instalments of £216.10 followed by a final instalment of £217.10.

Mrs A says she began having difficulties with the vehicle shortly after taking delivery and certainly within a month. However, she contacted BMF on 7 August 2024 saying that she had a warning light on the dashboard, a fault code 89 appeared and that there was a noise coming from the car. Mrs A told BMF that she went home and parked the car and couldn't use it as she couldn't risk driving the car with that code. BMF addressed Mrs A's concerns as a formal complaint.

During the course of investigating Mrs A's complaint, BMF arranged for the vehicle to be inspected by an independent engineer. The vehicle was inspected by the independent engineer on 2 September 2024. The engineer concluded that there was damage to the water pump and as the car had continued to be driven despite this issue, further damage had been caused to the head gasket.

Subsequent to the engineer's report, BMF issued its final response to Mrs A's complaint on 26 September 2024. BMF accepted that there may have been an issue with the water pump when the car was supplied to Mrs A in June 2024 and was prepared to pay £300 for this to be repaired. However, it wasn't prepared to cover the cost of any further repairs as it thought that Mrs A continuing to drive the car despite knowing that there was an issue likely caused further damage. Mrs A was dissatisfied at BMF's response and referred her complaint to our service.

Mrs A's complaint was reviewed by one of our investigators. He thought that BMF supplied Mrs A with a vehicle that was not of satisfactory quality and recommended that BMF pay for all repairs that needed to be carried out on the car.

BMF disagreed with our investigator's view. It said that the independent report clearly confirmed that the vehicle had sustained further damage because Mrs A continued to drive it. Therefore, it was unreasonable for it to be expected to cover these matters. As BMF disagreed with the investigator's assessment, the complaint was passed to an ombudsman for review.

So the complaint has been passed to me to decide.

My provisional decision of 14 February 2025

I issued a provisional decision – on 14 February 2025 - setting out why I was not intending to uphold Mrs A's complaint.

In summary, this was because I was satisfied that BMF paying Mrs A £300 in order to get the water pump on the car repaired was fair and reasonable in all the circumstances. Therefore, I was not intending to direct BMF to pay for any other repairs, or allow Mrs A to reject the car.

BMF's response to my provisional decision

BMF didn't respond to my provisional decision or provide anything further for me to consider ahead of my final decision.

Mrs A's response to my provisional decision

Mrs A responded and disagreed with my provisional decision. Mrs A emails can be summarised as her saying that she disagreed because:

- the investigator initially ruled in her favour.
- BMF is the legal owner of the car and it is responsible for it being roadworthy.
- the car was sold with a pre-existing fault as the fault code appeared within a month of purchase. And the independent report does not rule out the possibility that the head gasket failure had already begun prior to the car being supplied.
- BMF failed to act promptly after she reported the issue in August 2024 and only arranged an inspection months later.
- she has been impacted by the adverse information which BMF has reported to credit reference agencies.
- there are clear legal precedents, other ombudsmen decisions and case studies on our website which mean that her complaint should be upheld.

While I've summarised Mrs A's response to my provisional decision, I can confirm that I've read and considered everything that she has provided.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I remain satisfied that what I need to decide in this case is whether the car supplied to Mrs A was of satisfactory quality. Should it be the case that I don't think it was, I'll then need to decide what's fair, if anything, for BMF to do put things right. This includes deciding whether BMF should cover all repairs that may be due.

I've read and considered everything provided. I also want to reassure BMF and Mrs A that where I haven't commented on a specific issue a party has referred to, or a comment that may have been made, it's not because I've failed to take it on board and think about it. The reason I will not have commented on the issue is because I don't think I need to do so in order reach what I consider to be a fair and reasonable outcome. For the sake of completeness, I would add that our complaint handling rules, which I'm required to follow,

permit me to adopt such an approach.

It may also help for me to explain that I will reach my decision on the balance of probabilities. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I must reach my conclusion based on what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Having carefully considered matters, including the further comments since my provisional decision, while I'm satisfied that there may be some issues with the car which require resolving, I don't think that it would be fair and reasonable for BMF to cover all the repairs which may now be necessary, or to require it to accept a rejection of the car from Mrs A.

I therefore remain satisfied that what BMF has already proposed is fair and reasonable in all the circumstances and I'm not upholding Mrs A's complaint. I'll explain why in a little more detail.

The finance agreement in this case is a regulated hire-purchase agreement, which we are able to consider complaints about. Under the hire-purchase agreement, BMF purchased the vehicle from the dealership Mrs A visited. Mrs A then hired the vehicle from BMF and paid a monthly amount to it in return. BMF remained the legal owner of the vehicle under the agreement until Mrs A's loan was repaid.

This arrangement resulted in BMF being the supplier of Mrs A's vehicle and so it is also responsible for answering a complaint about its quality.

The Consumer Rights Act 2015 ("CRA")

The CRA covers hire-purchase agreements – such as Mrs A's agreement with BMF. Under a hire-purchase agreement, there are implied conditions that the goods supplied will be of satisfactory quality.

The CRA says the aspects of the quality of the goods and whether they are satisfactory includes their general state and condition alongside other things such as their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

Is there a fault with the vehicle?

Having considered the information provided I'm satisfied that there is a fault currently present on the vehicle. I say this because while there may be a dispute regarding the party responsible for some of the damage, the independent report confirms that work is needed on the car in order for it to become operational.

The independent engineer BMF commissioned believed that there was a problem with the water pump and that this was probably an issue that was present at the point of sale. He also added that the available evidence appeared to show that Mrs A continued to use the car after reporting the issue to BMF and further damage has been sustained to the head gasket as a result of this. Bearing in mind the contents of the report, I'm satisfied that there is currently a fault with the vehicle.

As this is case, I'll now proceed to decide whether the fault which I'm satisfied is currently present on the vehicle, meant that the car wasn't of satisfactory quality at the point of supply.

Was the vehicle that Mrs A was supplied with of satisfactory quality and if it wasn't what should BMF do to rectify matters?

It is clear that Mrs A has had issues with the car. But just because things have gone wrong with the vehicle, it doesn't automatically follow that it wasn't of satisfactory quality when it was initially supplied to her, or that this means BMF is responsible for rectifying everything that may now be a problem.

As the independent inspection highlighted two issues and BMF has only accepted that it is responsible for one of them, I've considered each issue separately.

The water pump

As I've set out in the section above, there is no dispute that the car needs repair work in relation to the water pump requiring replacement. Given BMF accepts that the water pump needing repair means that the car was not of satisfactory quality, I don't need to make my own finding to that effect.

Furthermore, BMF has paid Mrs A £300 to cover the cost of replacing the water pump. Bearing in mind that Mrs A was able to use the car for a number of months and repair is a potential remedy under the CRA, particularly where a fault manifests after 30 days, I'm satisfied that this constitutes a fair and reasonable offer to settle any issues with the water pump.

As this is case, I'm satisfied that what BMF has done as a result of accepting that the water pump wasn't of satisfactory quality when it supplied the car to Mrs A, is fair and reasonable in all the circumstances of the case.

I'll now consider the position in relation to any potential issues with the head gasket.

The head gasket

The independent engineer concluded that the damage to the car now extends past just the water pump needing repair and he concludes that simply replacing it is unlikely to result in the car becoming operational. The independent report sets out the engineer's belief that the head gasket on the car is likely to need repair too.

In her response to my provisional decision, Mrs A has said that the independent report does not rule out the possibility that the head gasket failure had already begun prior to the car being supplied. I've thought about what Mrs A has said. However, I'm afraid that I don't share Mrs A's interpretation of the independent report.

I say this because having reviewed the report, I'm satisfied that the independent engineer makes it clear that it is his view that it was Mrs A continuing to drive the car, despite reporting that there was a fault with it, that resulted in damage to the head gasket. Given the engineer stated what he thought the cause of the head gasket failure was, I don't think that he needed to explicitly rule out the possibility of there being existing damage, for it to be clear what his conclusion was.

Our investigator did not disagree with the engineer's conclusions on the head gasket requiring repair. However, he nonetheless concluded that as Mrs A is not a mechanic she couldn't be expected to know that the car shouldn't have been driven prior to the inspection. On the other hand, BMF has argued that Mrs A didn't need to be a mechanic to know that the car shouldn't be driven and as Mrs A continued driving the car despite knowing that there was a problem she should be responsible for any issues extending past the water pump.

I've carefully considered everything provided as well as what the parties have said.

In the first instance, it seems to me that Mrs A must have thought that there was an issue with the car for her to have got in contact with BMF on 7 August 2024, in the first place. I now note that Mrs A has said that she started experiencing issues with the fault code appearing within a month of the car being supplied to her.

Furthermore, I've also noted the content of Mrs A's email correspondence with BMF on 7 August 2024. In response to being asked *'Is the vehicle drivable?'*, Mrs A writes *"Yes it's drivable but I can't risk driving with that code and sound I had to return it back home and park it"*. In response to being asked *'What is the current mileage of the vehicle?'*, Mrs A writes *"84,613"*. Finally in response to being asked, *'Preferred outcome?'* Mrs A writes *"This¹ has been showing since day one, I cannot trust the car any longer, can't drive the car again"*.

After BMF referred to the contents of Mrs A's email, our investigator provided Mrs A with the opportunity to comment on it. Mrs A said that she reported the issue with the car promptly because she was concerned with the safety and reliability of the vehicle. She also said that BMF didn't inspect the car until four months after she reported the issue. In her response to my provisional decision, Mrs A also repeated that it took BMF months to arrange for the car to be inspected.

I do appreciate that it has been a number of months since the events in question and Mrs A's recollection of matters may not be as strong as a result. However, I'm afraid that Mrs A's recollections and timeline of events isn't supported by the rest of the evidence available. As I explained in the background section of this decision, Mrs A took custody of the car in late June 2024, with it having a mileage of around 80,400.

In her response to my provisional decision, Mrs A says that the fault code appeared a month after the car was supplied to her. But this contradicts what Mrs A said in her email to BMF of 7 August 2024, where she clearly stated the fault code appeared from day one. If the fault code had appeared on day one as Mrs A said in her email of 7 August 2024, this means that she would have driven the car over 4,000 miles in just under six weeks before she made BMF aware of the issue.

In my provisional decision, I made it clear that the independent engineer's inspection of the car took place on 2 September 2024, not December 2024. Mrs A supplying us with a copy of the inspection report with her referral of the complaint, which was also in September 2024, supports the inspection having taken place at that time. Indeed, the investigator's first assessment, which referred to the inspection report, was issued on 22 November 2024.

So I'm satisfied that the inspection took place on 2 September 2024. This was less than a month after Mrs A reported having issues with the car. In truth, the inspection would likely have taken place sooner than this as the complaint notes show that the inspection company attempted to make contact with Mrs A about arranging an inspection on 17 August 2024. But Mrs A had terminated the phone call and this phone call was only ten days after Mrs A had initially reported the fault. Therefore, I don't agree that there was a delay of months between the fault being reported and the inspection taking place. Furthermore, I don't agree that BMF failed to act promptly either.

As I explained in my provisional decision, the mileage recorded at the time of the inspection was 85,658. Given Mrs A had reported the mileage being 84,613 when she was asked for the mileage at the time she reported the initial fault with the car on 7 August 2024, this would mean that the car had been driven a further 1,000 miles in the just over four weeks it took to inspect the car.

¹ I am assuming that Mrs A is referring to the error code as I can't see what else she could be referring to in this context.

I appreciate that both our investigator and Mrs A have said that Mrs A wouldn't have known that she shouldn't have continued driving the car because she wasn't a mechanic and BMF didn't tell her not to do so. However, at best, this only accounts for the mileage prior to Mrs A's initial email to BMF. Even then, I'm not necessarily persuaded by this argument as I don't agree that only a mechanic would know that there may be a problem with continuing to drive a car, when a warning has illuminated on the dashboard.

In any event, and what is most important here is that, in her email of 7 August 2024, Mrs A told BMF that she couldn't risk driving the car and therefore she wasn't going to do so. What Mrs A said in her email correspondence means that I cannot reasonably conclude that Mrs A didn't know that there was a risk in continuing to drive the car from this point onwards at the very latest. Furthermore, as Mrs A told BMF that she wouldn't be driving the car, I'm not sure why it would have needed to tell Mrs A that she shouldn't drive the car in these circumstances.

As I've explained, it's clear that there are now faults with the car that extend past the water pump. The independent engineer stated that the head gasket has been damaged as a result of Mrs A continuing to use the vehicle while it was in a defective state. It's worth noting that, irrespective of any other faults, a component such as a head gasket will deteriorate over time and eventually require replacing. And, in my view, I don't think it's unreasonable that a car which has completed almost 86,000 miles will have a head gasket which may require some form of remedial work in the not-so-distant future.

It could be argued that the proximity of the head gasket requiring work to the date the car was supplied to Mrs A is an indicator that the car was supplied with an engine in the early stages of head gasket failure. I don't rule out this possibility completely particularly as likely head gasket failure was diagnosed only ten weeks after the car was supplied to Mrs A. For the avoidance of doubt and in response to Mrs A's comments in response to my provisional decision, I wish to make it clear that this is a possibility that I've considered not one that the independent engineer suggested.

However, I'm mindful of the overall context here. The car appears to have been driven over 5,000 miles in a ten-week period. Even leaving aside the issue of whether this was done with fault codes present, it's fair to say that's a lot of use in such a short period. Furthermore, 1,000 of these miles were driven after Mrs A had notified BMF of a problem and the inspection company was trying to arrange an inspection of the car.

In these circumstances, I cannot reasonably conclude that Mrs A's actions, in completing the number of miles she has despite being aware of and reporting a problem, did not significantly contribute to or exacerbate the issues being experienced now. Therefore, while I accept the possibility that there may have been early-stage issues with the head gasket at the time the car was supplied to Mrs A, I think that Mrs A's actions in driving the vehicle, for the amount of miles that she did in knowledge of a potential problem, is likely to have significantly worsened the issue.

I say this in the knowledge that the vehicle had already completed 80,000 miles before it was supplied and so will already have had a significant amount of wear and tear by this point. Driving a car with as much previous mileage, further, when there are early signs of an issues is likely to worsen these issues.

As this is the case, I'm not persuaded that the available evidence shows me that it is more likely than not that any issues with the head gasket had developed, or were developing, when BMF supplied the car to Mrs A. I think that the number of miles Mrs A completed in the short time she had the car as well as Mrs A's actions in continuing to use the vehicle in the

knowledge there may have been a problem, are just as, if not more likely, the cause of any issues with the head gasket.

In these circumstances and as there is a strong possibility that the damage now is not limited to simply repairing the head gasket, I don't think that it would now be fair and reasonable to require BMF to cover the costs of these additional repairs, or allow Mrs A to reject the car.

In reaching my conclusions, I've also considered the information Mrs A has referred to from our website. I don't know if she is referring to this information when she says that there are legal precedents. However, I do think that it's important for me to explain that we consider complaints on an individual basis and looking at the individual facts and circumstances.

Furthermore, I'm not bound by the outcomes reached by other ombudsmen on different cases, or the case study examples that we've published – this is particularly as the case studies are illustrative examples, rather than being decisions which are made on the full facts and circumstances.

Ultimately, what I'm required to do is consider the facts of a case and reach my own conclusion. So the outcomes on the case examples Mrs A has referred to, cannot and do not bind me into reaching the same conclusion on this case. That said, consistency is important and with a view to providing some clarity and reassurance to Mrs A, it might help for me to explain that there are some key differences between Mrs A's complaint and the examples she has referred to.

In the respective cases Mrs A has referred to, I can see that the consumer reported the fault immediately and as a result repairs were carried out shortly after the car was initially supplied. The car did accrue some mileage. However, the mileage added was added after what was later considered to be failed repairs. In this case, all of the mileage has been done prior to any repairs taking place and a significant amount of the mileage was completed even though Mrs A had said she wouldn't be driving the car as it was too risky to do so.

For the sake of completeness, I would also add that there is no suggestion that the customers in the cases Mrs A has referred to, drove over 5,000 miles in ten weeks, in the way that Mrs A appears to have done here either. As this is the case, while I'm not required to replicate the outcomes reached by other ombudsmen and our more general case studies, nonetheless, I don't consider that my answer here is incompatible or inconsistent with what Mrs A has referred to, notwithstanding the differing outcomes.

On balance and having considered everything, I think that BMF paying Mrs A £300 for her to get the water pump on the car repaired is fair and reasonable. Therefore, I'm not requiring BMF to pay for any other repairs, or directing it to allow Mrs A to reject the car and it follows that I'm not upholding Mrs A's complaint.

For the avoidance of doubt and the sake of completeness, I wish to make it clear that as I am not upholding Mrs A's complaint, I'm not requiring it to take any action in relation to what BMF is reporting to credit reference agencies either. If Mrs A thinks it is unfair for BMF to report adverse information to credit reference agencies for some other reason, this is a matter she will need to take up with BMF in the first instance.

I appreciate that this is likely to be very disappointing for Mrs A – particularly as our investigator suggested that her complaint should be upheld and she will be left in a position where she is being expected to pay for a car which she's unable to use without first getting it repaired. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained above and in my provisional decision of 14 February 2025, I'm satisfied that what BMF has already agreed to do to put things right for Mrs A is fair and reasonable in all the circumstances. I'm therefore not upholding the complaint or requiring Blue Motor Finance to do anything more, or anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 1 April 2025.

Jeshen Narayanan
Ombudsman